

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Orion Bank (“FDIC-R”), and James Aultman, Earl Holland, and Brian Schmitt (collectively the “Settling Defendants”), and Progressive Casualty Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Defendants and Insurer may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to November 13, 2009, Orion Bank (“Bank”) was a depository institution organized and existing under the laws of Florida;

On November 13, 2009, the Florida Office of Financial Regulation closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On January 23, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director of the Bank. Those claims for damages are now pending in the United States District Court for the Middle District of Florida in *FDIC as Receiver for Orion Bank v. Aultman*, No. 2:13-cv-99-SPC-CM (“D&O Action”). The Settling Defendants have denied liability in the D&O Action.

Insurer issued a director and officer liability policy numbered [redacted] ("Policy"), (b)(4) which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against the Settling Defendants. Additionally, on October 17, 2013, Insurer filed a declaratory judgment action against the FDIC-R, James Aultman; Earl Holland; Alan Pratt; and Brian Schmitt in the United States District Court for the Middle District of Florida captioned *Progressive Casualty Insurance Company v. FDIC as Receiver for Orion Bank, et. al.*, case number 2:13-cv-00737-SPC-CM ("Coverage Action") seeking a declaration of its rights and obligations under the Policy with regard to the claims asserted by the FDIC-R in the D&O Action. On February 5, 2014, the Coverage Action was dismissed, without prejudice, by stipulation.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement,") on or before one hundred and twenty (120) calendar days following the date the Agreement is executed by all Parties, the Settling Defendants shall pay the FDIC-R the sum of \$1.225 million ("the Defendants' Payment") and Insurer shall pay the FDIC-R the sum of \$2.485 million ("the Insurer's Payment") for a collective total of \$3.710 million ("the Settlement Payment"). The Insurer's payment obligation under this Agreement is limited to the Insurer's Payment. The Settling Defendants shall be jointly and severally liable for the Defendants' Payment.

B. The Settling Defendants and Insurer shall deliver the Defendants' Payment and the Insurer's Payment, respectively, to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants and Insurer.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in United States District Court in Middle District of Florida and any defaulting party agrees to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement, or

3. Terminate the Agreement, return any portion of the Settlement Payment received to the paying party, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and resume the Lawsuit. The Settling Defendants further agree to not assert any objections, defenses, claims or counterclaims, including any defense based on any statute of limitations that bars any of the FDIC-R's claims, that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after receipt of the Settlement Payment in full, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, insurers, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and its and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank including without limitation the causes of action

alleged in the D&O Action, except this release does not apply to the restitution orders issued against Angel Guerzon, Thomas Hebble, Francesco Mileto, and Jerry Williams by the United States District Court for the Middle District of Florida in case numbers 2:11-CR-35-FtM-36DNF, 2:11-CR-36-FtM-36DNF, 2:11-CR-37-FtM-36DNF and 2:11-CR-38-FtM-36DNF. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge:

1. The FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.
2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and its and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy. As part of this release of the Insurer, the Settling Defendants agree that any interest they have under the Policy is extinguished.
3. Each other and each other's respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the D&O Action.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges:

1. The FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policy.

2. Each of the Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the D&O Action. Nothing in this release shall affect any defense to Coverage Insurer may have with respect to any claim that may be asserted against it in the future, if any, connection with the Policy or otherwise.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the

jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION V: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the

undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including sworn personal financial statements and herein affirms that his financial information is true and accurate as of the date of this agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

SECTION VI: Reasonable Cooperation

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

SECTION VII: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity

by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Florida.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Dennis Klein
Hughes, Hubbard & Reed, LLP
201 South Biscayne Boulevard
Miami, Florida 33131
305.379.5564

(b)(6)

If to the Settling Defendants:

Lawrence A. Kellogg
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788

(b)(6)

If to Insurer:

Lewis K. Loss
LOSS, JUDGE & WARD, LLP
Two Lafayette Centre, 1133 21st Street, N.W., Suite 450
Washington, D.C. 20036
Telephone: (202) 778-4060

(b)(6)

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirement

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR ORION BANK

(b)(6)

Date: 10/10/2014

BY:
TITLE: Counsel
PRINT NAME: Steven Smith

JAMES AULTMAN

Date: _____

EARL HOLLAND

Date: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR ORION BANK

Date: _____

BY:
TITLE:
PRINT NAME:

JAMES AULTMAN

(b)(6) Date: 10/9/2014

EARL HOLLAND

Date: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR ORION BANK

Date: _____

BY:
TITLE:
PRINT NAME:

JAMES AULTMAN

Date: _____

EARL HOLLAND

(b)(6)

Date: 10/14/14

(b)(6)

Date: 10/12/14

BRIAN SCHMITT



PROGRESSIVE CASUALTY COMPANY

Date: _____

BY: _____
TITLE: _____
PRINT NAME: _____

BRIAN SCHMITT

Date: _____

PROGRESSIVE CASUALTY COMPANY

(b)(6)

Date: 10/9/14



BY: *Its Duty Authorized Agent & Representative*
TITLE: *Claim Specialist*
PRINT NAME: *Lawrence D. Leeders*

EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
ORION BANK OF NAPLES, FLORIDA

Case No. 2:13-cv-58-FtM-39CM

Plaintiff,

v.

JAMES AULTMAN, EARL HOLLAND,
ALAN PRATT, AND BRIAN SCHMITT,

Defendants.

**PLAINTIFF'S AND DEFENDANTS' STIPULATION OF
DISMISSAL WITH PREJUDICE**

Plaintiff, the Federal Deposit Insurance Corporation as Receiver for Orion Bank of Naples, Florida ("FDIC-R"), and defendants James Aultman, Earl Holland, and Brian Schmitt (collectively, the "Defendants," and together with the FDIC-R, the "Parties") hereby file this Stipulation of Dismissal With Prejudice ("Stipulation") under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The Parties agree as follows:

1. The Parties have agreed that the FDIC-R's claims against all Defendants shall be dismissed with prejudice.
2. All Defendants have answered in this action, and all Defendants agree to these dismissals.
3. These cases are not governed by any federal statute that requires an order of the court for dismissal of these Defendants.
4. All Parties shall bear their own attorneys' fees and costs.

Dated: October __, 2014

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By: /s/ Dennis S. Klein
Dennis S. Klein
Fla. Bar # 0091767

[Redacted]

201 South Biscayne Boulevard
Suite 2500
Miami, Florida 33131-4332
Telephone: (305) 358-1666
Facsimile: (305) 371-8759

Counsel for the Federal Deposit Insurance Corporation as Receiver for Orion Bank

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**

By: /s/ Jason Kellogg
Jason Kellogg
Fla. Bar # 0578401

[Redacted]

201 South Biscayne Boulevard
Miami Center, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789

Counsel for James Aultman, Earl Holland, and Brian Schmitt

(b)(6)

(b)(6)

CERTIFICATE OF SERVICE

I hereby certify that on October __, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Dennis S. Klein
Dennis S. Klein

SERVICE LIST

Counsel for James Aultman, Earl Holland, and Brian Schmitt

Lawrence A. Kellogg, P.A.
Levine Kellogg Schneider + Grossman LLP
201 S. Biscayne Blvd.
22nd Floor, Miami Center
Miami, FL 33131

(b)(6)